

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC PRIORITY 9202

C O N F I D E N T I A L BOGOTA 0199

E.O. 11562: GDS

TAGS: EAIR, ENRG, CO

SUBJECT: CIVAIR - GOC FUEL TAXES AND FUEL PRICE DIFFERENTIAL

REF: 76 BOGOTA 12762, 76 STATE 312499, 75 BOGOTA 3946,

74 BOGOTA 11092

1. FOLLOWING REVIEW OF FILES IN PREPARATION FOR CONTINUED DISCUSSIONS WITH THE GOC ON THE TAX AND FUEL PRICE DIFFERENTIAL PROBLEMS, WE HAVE CONCLUDED THAT A) WE HAVE NOT RESPONDED TO A 1974 GOC PROPOSAL FOR CONSULTATIONS AND B) UNILATERAL ACTION AFFECTING AVIANCA'S ACCESS TO FUEL IN THE US MAY WELL PLACE US IN VIOLATION OF THE BILATERAL.

2. AS NOTED PREVIOUSLY, THE FUEL TAX PROBLEM APPEARS TO BE ON ITS WAY TO SOLUTION ALTHOUGH, ADMITTEDLY, GOC ACTION TO IMPLEMENT EXEMPTION/REFUND PROCEDURE FOR BRANIFF IS TAKING MUCH LONGER THAN IT SHOULD. WE WILL DISCUSS THE DELAY WITH THE MINISTRY OF FOREIGN RELATIONS AND WILL (AGAIN) REQUEST THEIR DIRECT INTERVENTION WITH THE MINISTRY OF FINANCE. IF DELAY CONTINUES, IT WOULD BE OUR RECOMMENDATION THAT AVIANCA BE SUBJECT TO TAXES ON ITS FUEL PURCHASES IN THE US. NOTIFICATION OF OUR INTENTION TO TAX AVIANCA SHOULD BE PASSED ON NOW TO THE COMPANY'S LAWYER IN WASHINGTON.

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3. WHILE FUEL TAXES ARE COVERED SPECIFICALLY IN THE BILATERAL AND PRECISE RETALIATION IS POSSIBLE IF THE ISSUE IS NOT RESOLVED SOON, THIS IS NOT NECESSARILY THE CASE AS REGARDS THE FUEL PRICE DIFFERENTIAL. AS POINTED OUT IN BOGOTA 3946, THE FUEL PRICE DIFFERENTIAL AND ACCESS TO THE US DOMESTIC FUEL POOL ARE NOT PRECISE EQUIVALENTS (AS IS THE CASE WITH THE TAXES) AND PRECISE RETALIATION

IS NOT POSSIBLE. IF WE DENY AVIANCA ACCESS TO THE POOL AS A MEANS OF PRESSURE ON THE PRICE ISSUE WE ESCALATE THE SITUATION BY INTRODUCING NEW FACTORS PERMITTING THE GOC TO CLAIM NEW ARGUMENTS (ACCESS) AND TO COUNTER-ESCALATE. IN THIS REGARD, FOREIGN MINISTRY INFORMED US IN 1974 (BOGOTA 11092) THAT "ANY MEASURE TAKEN AGAINST THE COLOMBIAN COMPANY WILL RESULT IN EQUIVALENT MEASURES IMMEDIATELY BEING TAKEN AGAINST THE UNITED STATES COMPANIES IN COLOMBIA."

4. ALTHOUGH THE GOC HAS MAINTAINED THAT THE FUEL PRICE DIFFERENTIAL IS NOT COVERED BY THE BILATERAL, THEY HAVE NOT CLOSED THE DOOR TO FURTHER DISCUSSIONS ON THE MATTER. IN DECEMBER 1974, THE FOREIGN MINISTRY IN A NOTE TO THE EMBASSY STATED THAT THE MATTER COULD BE STUDIED UNDER THE PROVISIONS OF THE AGREEMENT FOR THE SETTLEMENT OF DISPUTES (ARTICLES 11 AND 12), A SUGGESTION ALSO MADE BY AVIANCA (74 BOGOTA 11902 AND 75 BOGOTA 3946). SO FAR, USG HAS NOT RESPONDED TO THE FOREIGN MINISTRY'S SUGGESTION REGARDING CONSULTATIONS, ALTHOUGH IT WAS EMBASSY'S RECOMMENDATION THAT WE FOLLOW THIS ROUTE (75 BOGOTA 3946). THE GOC'S SUGGESTION IS STILL ON THE TABLE, AND IF WE CONTINUE TO IGNORE IT AND INSTEAD DENY AVIANCA ACCESS TO THE DOMESTIC FUEL POOL, WE MAY FIND OURSELVES ACCUSED OF VIOLATING THE BILATERAL.

5. WE PLAN TO MEET WITH FOREIGN MINISTRY REPRESENTATIVES AS SOON AS POSSIBLE, HOPEFULLY NEXT WEEK WHEN THEY RETURN TO WORK FOLLOWING THE TRADITIONAL HOLIDAY VACATION BREAK.
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IN THE MEANTIME, WE BELIEVE IT WOULD BE USEFUL FOR THE DEPARTMENT TO CONSIDER THE GOC'S STILL PENDING SUGGESTION FOR CONSULTATIONS AND TO ADVISE US ACCORDINGLY.
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